

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GERALD HACKEL,

Plaintiff,

Case No. 22-cv-12618  
Hon. Matthew F. Leitman

v.

UPGRADE INC.,

Defendant,

/

**ORDER (1) ADOPTING RECOMMENDED DISPOSITION OF REPORT  
AND RECOMMENDATION (ECF No. 34), (2) DISMISSING PLAINTIFF'S  
COMPLAINT, AND (3) TERMINATING DEFENDANT'S MOTIONS TO  
DISMISS AND FOR SUMMARY JUDGMENT (ECF Nos. 28, 31) AS MOOT**

On October 31, 2022, Plaintiff Gerald Hackel filed this action against Defendant Upgrade Inc. (*See* Compl., ECF No. 1.) In the Complaint, Hackel claimed that Upgrade violated the Fair Credit Reporting Act when Upgrade reported incorrect credit information about Hackel to credit reporting agencies. (*See id.*) On August 31, 2023, Upgrade filed a motion to dismiss Hackel's Complaint. (*See* Mot. to Dismiss, ECF No. 28.)

Hackel did not file a response to the motion to dismiss. Thereafter, the assigned Magistrate Judge issued a show cause order in which the Magistrate Judge ordered Hackel to file a response to the motion to dismiss by November 5, 2023. (*See* Order, ECF No. 33.) The Magistrate Judge warned Hackel that the [f]ailure to

timely respond to this Order to Show Cause will result in a recommendation that the motion to dismiss be granted and/or that this case be dismissed for failure to prosecute under Rule 41(b).” (*Id.*, PageID.213.) Hackel did not respond to the Magistrate Judge’s show cause order and never filed a response to Upgrade Inc.’s motion to dismiss.

Accordingly, on December 6, 2023, the Magistrate Judge issued a Report and Recommendation in which he recommended that the Court dismiss Hackel’s Complaint under Federal Rule of Civil Procedure 41(b) with prejudice for failure to prosecute (the “R&R”). (*See* R&R, ECF No. 34.) The Magistrate Judge further recommended that the Court terminate as moot Upgrade’s motion to dismiss (ECF No. 28) and a separate summary judgment motion that Upgrade had filed (ECF No. 31). (*See id.*, PageID.220.) At the conclusion of the R&R, the Magistrate Judge informed the parties that if they wanted to seek review of his recommendation, they needed to file specific objections with the Court within fourteen days. (*See id.*, PageID.220-221.)

Neither party has filed objections to the R&R. Nor has either party contacted the Court seeking additional time to file objections. The failure to object to an R&R releases the Court from its duty to independently review the matter. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). *See also Ivey v. Wilson*, 832 F.2d 950, (6th Cir. 1987) (where party fails to file “timely objections” to report and recommendation, court

may accept that recommendation “without expressing any view on the merits of the magistrate’s conclusions”). Likewise, the failure to file objections to an R&R waives any further right to appeal. *See Howard v. Sec’y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987).

Accordingly, because neither party filed any objections to the R&R, **IT IS HEREBY ORDERED** that the Magistrate Judge’s recommended disposition of Hackel’s Complaint and Upgrade’s motions is **ADOPTED**.

**IT IS FURTHER ORDERED** that Hackel’s Complaint is **DISMISSED WITH PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Finally, **IT IS ORDERED** that Upgrade’s motions to dismiss and for summary judgment (ECF Nos. 28, 31) are **TERMINATED AS MOOT**.

**IT IS SO ORDERED.**

s/Matthew F. Leitman  
MATTHEW F. LEITMAN  
UNITED STATES DISTRICT JUDGE

Dated: January 17, 2024

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 17, 2024, by electronic means and/or ordinary mail.

s/Holly A. Ryan  
Case Manager  
(313) 234-5126